

Appendix 2

Guidelines laid down by the Court in the case of R (OTA Brown) v Secretary of State for Work and Pensions [2008] 3158 (Admin) which also gives decision makers some additional guidance when considering their equality duties.

Firstly, those in the public authority who have to take decisions that do or might affect (disabled) people **must be made aware of their duty to have “due regard”** to the identified goals... Thus, an incomplete or erroneous appreciation of the duties will mean that “due regard” has not been given to them...

Secondly, the “due regard” duty **must be fulfilled before and at the time that a particular policy that will or might affect (disabled) people is being considered by the public authority in question.** It involves a conscious approach and state of mind... Attempts to justify a decision as being consistent with the exercise of the duty when it was not, in fact, considered before the decision, are not enough to discharge the duty...

Thirdly, the duty **must be exercised in substance, with rigour and with an open mind.** The duty has to be integrated within the discharge of the public functions of the authority. It is not a question of “ticking boxes”...

Fourthly, the duty imposed on public authorities that are subject to the section 49A(1) duty is **a non-delegable duty.** The duty will always remain on the public authority charged with it. In practice another body may actually carry out practical steps to fulfil a policy stated by a public authority that is charged with the section 49A(1) duty. In those circumstances the duty to have “due regard” to the needs identified will only be fulfilled by the relevant public authority if (i) it appoints a third party that is capable of fulfilling the “due regard” duty and is willing to do so; and (ii) the public authority maintains a proper supervision over the third party to ensure it carries out its “due regard” duty...

Fifthly, and obviously, **the duty is a continuing one.**